IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24771 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
HUSENBHAI ABDULBHAI - Respondent(s)

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Appearance :
MR KL PANDYA AGP for Petitioner(s) : 1,
MR AA KURESHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 02/08/2006

ORAL JUDGMENT

1. Mr. A.A. Kureshi, learned advocate, appears and states that he has received instructions to appear on behalf of the respondent/original plaintiff and he shall file Vakaltnama on behalf

of the respondent today itself and he waives service of notice of rule on behalf of the respondent. The registry is directed to accept the Vakalatnama to be tendered by Mr. A.A. Kureshi, learned advocate for respondent.

2. By filing instant petition under Articles 226/227 of the Constitution of India, the petitioner seeks to challenge the order dated 12.1.2005 recored below application Ex.100 in Regular Civil Suit No.473 of 1989 by the learned Civil Judge (SD), Veraval, by which the application filed by the petitioner praying to reopen the stage of defence of the defendant which has been closed on 19.10.2004 and to permit it to tender its oral as well as documentary evidence, has been rejected.

3. The respondent herein has filed RCS No.473 of 1989 in the Court of learned civil Judge (SD) Veraval for a declaration and injunction to the effect that the suspension order passed by the petitioner suspending him from service is null and void.

4. The petitioner appeared and contested the suit by filing written statement. The learned trial Judge thereafter framed issues and started recording the evidence. The evidence of the

respondent/original plaintiff has been over. Thereafter the petitioner sought various adjournments. However, it could not tender its oral/documentary evidence and, therefore, the learned trial Judge has closed the stage of recording the evidence on 19.10.2004. The petitioner remained silent for about three months and thereafter for the first time on 12.1.2005, it filed an application Ex.100 to open the stage of the petitioner's evidence by permitting it to lead oral as well as documentary evidence, which has been rejected, and this order has given rise to instant petition.

5. Mr. KL Pandya, learned AGP for the petitioner, urged that in the interest of justice the impugned order deserves to be quashed and set aside otherwise the petitioner/defendant would be non-suited. Moreover, according to him, substantial question of law is involved in the suit with regard to service jurisprudence. He, therefore, urged to allow this petition and to quash and set aside the impugned order, thereby granting application Ex.100 by permitting the petitioner to lead its oral/documentary evidence.

6. Mr. AA Kureshi, learned advocate of the respondent/original plaintiff, has contended that a lot of opportunities were given to he

petitioner to tender its oral/documentary evidence but they did not avail of them which has resulted in passing the order of closure of the evidence of the petitioner/defendant. The petitioner is a government body and, therefore, it must be vigilant about its rights. It is also contended by him that the suit is of the year 1989 which has not been adjudicated upon till now. According to him, if the order impugned is quashed and set aside, it would result into miscarriage of justice and, therefore, he urged to dismiss the petition.

7. This Court has considered the submissions advanced by Mr. KL Pandya, learned APP for the petitioner and Mr. AA Kureshi, learned Advocate for the respondent and perused the impugned order.

8. It is true that the petitioner has awaken from slumber after three months i.e., on 12.1.2005, three months after closure of the its evidence on 19.10.2004. The petitioner ought to have been vigilant about its right in a case where the question of service jurisprudence is involved. It is equally true that in a suit filed in the year 1989 recording of evidence was started only in the year 2003 and thereafter also the petitioner did not think it fit to tender its

oral/documentary evidence.

9. Notwithstanding the aforesaid fact situation, according to this court, if the stage of evidence is not reopened, it would result into miscarriage of justice as the petitioner would be non-suited. Therefore, the impugned order deserves to be quashed and set aside by allowing this petition and thereby allowing the application Ex.100 by permitting the petitioner to lead its oral as well as documentary evidence.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 19.10.2004 recorded below application Ex.100 in RCS No.473 of 1989 passed by the learned Civil Judge (SD), Veraval is quashed and set aside, as a result which the application Ex.100 filed in RCS No.473 of 1989 is allowed and thereby the petitioner is permitted to tender its oral/documentary evidence.

11. The petitioner is directed to see that it shall make necessary arrangement to keep its witnesses before the trial court on the first date which will be given by the learned trial Judge after receiving a copy of this order. The petitioner shall not pray for adjournment on that

day or thereafter and it shall produce its evidence, oral as well as documentary, without fail.

12. It is expected of the trial court to expedite the hearing of the suit and after recording the oral/documentary evidence of the petitioner, the learned trial Judge shall deliver the judgment and order forthwith.

Rule is made absolute accordingly.

(A.M. Kapadia, J.)

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